

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELIZABETH A. SULLIVAN, CAROL M. DUBOIS,
and JILL M. CASSAS,

07 CV 11416

Plaintiffs,

-against-

TOWN OF DEERPARK, MARK A. HOUSE,
Town Supervisor, sued in his individual capacity,
and WILLIAM R. WERNER, Police Chief, sued
in his individual capacity,

**VERIFIED ANSWER
TO AMENDED COMPLAINT**

Defendants.

-----X

Defendant named herein as **TOWN OF DEERPARK**, by its attorneys, **HODGES, WALSH & SLATER, LLP**, as and for an Answer to plaintiffs' Amended Complaint dated June 25, 2008, allege upon information and belief as follows:

I. INTRODUCTION

FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "1" of the Plaintiffs' Amended Complaint.

II. PARTIES

SECOND: Denies each and every allegation contained in paragraphs "3" of the Plaintiffs' Amended Complaint but admits Carol DuBois lives in Port Jervis.

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "6" and "7" of the Plaintiffs' Amended Complaint and refers all questions of law to this Court.

III. JURISDICTION AND VENUE

FOURTH: Denies each and every allegation contained in paragraphs "8", "9" and "10" of the Plaintiffs' Amended Complaint.

IV. FACTUAL AVERMENTS

Elizabeth Sullivan

FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "12", "17", "18", "19", "21", "23" and "26" of the Plaintiffs' Amended Complaint.

SIXTH: Denies each and every allegation contained in paragraphs "13", "14", "15", "16", "20", "22", "24", "25" and "27" of the Plaintiffs' Amended Complaint.

Carol M. DuBois

SEVENTH: Denies each and every allegation contained in paragraphs "28", "30", "31", "32", "34", "37" and "41" of the Plaintiffs' Amended Complaint.

EIGHTH: Denies each and every allegation contained in paragraphs "29" of the Plaintiffs' Amended Complaint but admits DuBois has been employed as a part-time officer.

NINTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "33", "35", "36", "39" and "40" of the Plaintiffs' Amended Complaint.

Jill M. Cassas

TENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "43" of the Plaintiffs' Amended Complaint.

ELEVENTH: Denies each and every allegation contained in paragraphs "44", "45", "46", "47", "48" and "49" of the Plaintiffs' Amended Complaint.

V. CAUSES OF ACTION

TWELFTH: Defendant, TOWN OF DEERPARK repeats and realleges each and every denial set forth in paragraphs "1" through "49" of plaintiffs' Amended Complaint with the same force and effect as if fully set forth at length herein.

THIRTEENTH: Denies each and every allegation contained in paragraphs "51", "52" and "53" of the Plaintiff's Amended Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

FOURTEENTH: All claims asserted by plaintiffs under the laws of the State of New York are barred by plaintiffs' failure to file a Notice of Claim.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

FIFTEENTH: All claims asserted pursuant to Title VII of the Civil Rights Law based on the actions of defendants which occurred more than 180 days prior to the filing of the Charge of Discrimination with the EEOC are barred as untimely.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

SIXTEENTH: Plaintiffs' claims for damages pursuant to Section 296 of the New York Human Rights Law are barred as against the municipal defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

SEVENTEENTH: Actions of the individual co-defendants as claimed in plaintiffs' Complaint were not pursuant to municipal policy or custom.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

EIGHTEENTH: Those claims predicated on occurrences more than three years before the filing of plaintiffs' Complaint are barred by the statute of limitations.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

NINETEENTH: The plaintiffs' Complaint fails to state a cause of action and/or claim upon which relief may be granted.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

TWENTIETH: The plaintiff's claims do not rise to the level of a constitutional violation as against the municipal defendant.

AS AND FOR AN EIGHTH AFFIRAMTIVE DEFENSE

TWENTY-FIRST: The plaintiffs did not suffer a materially adverse employment action as a result of the actions of the defendants.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

TWENTY-SECOND: The plaintiffs failed to mitigate damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

TWENTY-THIRD: The plaintiff employees unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

TWENTY-FOURTH: The defendant had a readily accessible and effective policy for reporting and resolving complaints of sexual harassment and/or discrimination.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

TWENTY-FIFTH: The plaintiffs failed to exhaust all administrative remedies.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

TWENTY-SIXTH: The actions of defendants did not create a pervasive hostile work environment.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

TWENTY-SEVENTH: The plaintiff's claim for punitive damages is barred by public policy and the laws of the State of New York.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

TWENTY-EIGHTH: The defendants acted in good faith and without malice.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

TWENTY-NINTH: The plaintiff's damages, if any, were caused and/or contributed to by reason of the culpable conduct of the plaintiffs.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

THIRTIETH: The plaintiff's damages, if any, were caused and/or contributed to by reason of the acts of the plaintiffs.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

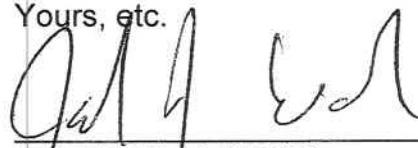
THIRTY-FIRST: Actions of defendants towards plaintiffs were based on legitimate, non-discriminatory rationale.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

THIRTY-SECOND: If the claims of the plaintiffs are found to be true, the Municipal defendant had no knowledge of nor acquiesced in, or subsequently condoned, any of the actions of co-defendants claimed in plaintiff's Complaint.

Dated:White Plains, NY
August 18, 2008

Yours, etc.



John J. Walsh (4092)
HODGES, WALSH & SLATER, LLP
Attorneys for Defendant
Town of Deer Park
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TO: BERGSTEIN & ULLRICH, LLP (HU 6597)
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15 Railroad Avenue
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MIRANDA & SOKOLOFF
240 Mineola Blvd.
Mineola, NY 11501

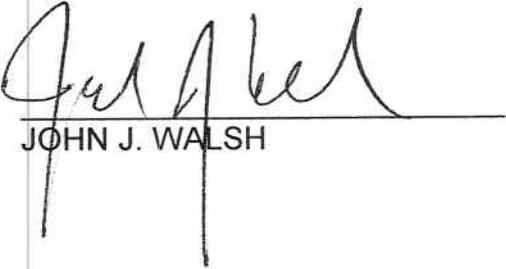
DONALD L. FRUM
565 Taxter Road
Elmsford, NY 10523

VERIFICATION

STATE OF NEW YORK)
 SS.:
COUNTY OF WESTCHESTER)

I, THE UNDERSIGNED, AM AN ATTORNEY ADMITTED TO PRACTICE IN THE COURTS OF THE STATE OF NEW YORK, AND SAY THAT: I AM THE ATTORNEY OF RECORD, OR OF COUNSEL WITH THE ATTORNEY OF RECORD, FOR THE DEFENDANT, TOWN OF DEERPARK. I HAVE READ THE ANNEXED **VERIFIED ANSWER TO AMENDED COMPLAINT**, KNOW THE CONTENTS THEREOF, AND THAT SAME ARE TRUE TO MY OWN KNOWLEDGE, EXCEPT THOSE MATTERS THEREIN WHICH ARE STATED TO BE ALLEGED UPON INFORMATION AND BELIEF, AND AS TO THOSE MATTERS THEREIN NOT STATED UPON KNOWLEDGE, IS BASED UPON THE FOLLOWING: MATERIAL IN THE FILE, INFORMATION AND DOCUMENTS CONTAINED IN SAID FILE.

Dated:White Plains, New York
August 18, 2008


JOHN J. WALSH

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 SS.:)
COUNTY OF WESTCHESTER)

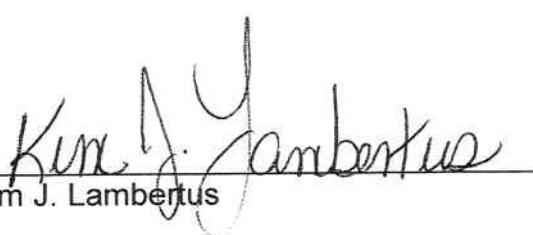
Kim J. Lambertus, being duly sworn, deposes and says:

I am employed by the law firm of HODGES, WALSH & SLATER, LLP, counsel for Defendant in the above action and I am over the age of 18 years and I am not a party to this action. On August 19, 2008, I served a true copy of the annexed **Verified Answer to Amended Complaint** in the following manner: by mailing same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York addressed to the last known address of all attorneys in this action as indicated below:

TO: BERGSTEIN & ULLRICH, LLP (HU 6597)
Attorneys for Plaintiffs
15 Railroad Avenue
Chester, New York 10918
(845) 469-1277

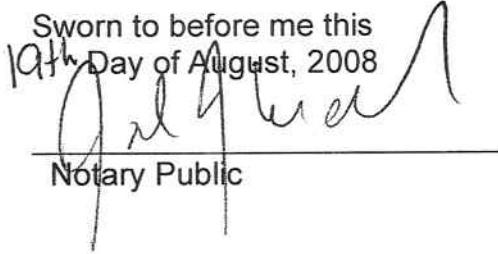
MIRANDA & SOKOLOFF
240 Mineola Blvd.
Mineola, NY 11501

DONALD L. FRUM
565 Taxter Road
Elmsford, NY 10523



Kim J. Lambertus

Sworn to before me this
19th Day of August, 2008



Notary Public

JOHN J. WALSH
Notary Public, State of New York
No. 4827450
Qualified in Orange County
Commission Expires May 31, 2010